49th Annual Report
Covering the Licence-year Ended
February 28, 1989

Annual Report of the
Motor Carrier Commission

Pursuant to Section 34
of the Motor Carrier Act

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VANCOUVER, BRITISH COLUMBIA

To His Honour the Lieutenant Governor in Council
of the Province of British Columbia

MAY IT PLEASE YOUR HONOUR:

SIR: We respectfully transmit herewith the Forty-ninth Annual Report, pursuant to the provisions of section 34 of the *Motor Carrier Act*, covering the licence-year ended February 28, 1989.

MOTOR CARRIER COMMISSION:

GERARD M. MORRIS, *Acting Chairman*

IAN W. CRAIG, *Commissioner*

WILLIAM H. PRESTON, *Commissioner*

REPORT OF THE MOTOR CARRIER COMMISSION, 1988/89

GENERAL

The Motor Carrier Commission is charged with the regulation of motor carriers in this province, with the objects of promoting adequate and efficient service and reasonable and just charges for it; promoting safety on the public highways; and fostering sound economic conditions in the transportation business of the Province. The Commission may make investigations, inquiries, regulations and orders it thinks necessary for the carrying out of these objects.

The Commission regulates the operations of motor carriers within the Province of British Columbia through a system of licensing. Applications for new authority or alterations to existing authority are filed with the Motor Carrier Division. The Division gives public notice of applications, conducts an investigation of each application and submits a report to the Commission. The Commission considers all of the information before it, and arrives at a decision or, if further investigation is required, may set the application down for a public hearing.

The Motor Carrier Commission derives its authority to regulate motor carriers from a provincial statute, the *Motor Carrier Act*, and by delegation from the Government of Canada pursuant to the provisions of the *Motor Vehicle Transport Act*.

The present members of the Commission are Acting Chairman Gerard M. Morris, Commissioner Ian W. Craig and Commissioner William H. Preston.

REVENUE

The statement of revenue derived from permit and licence fees paid during the 1988/89 licence year and from other sources shows a total of $3,558,033, which was paid into general revenue. This amount is $716,740 more than was realized in the previous year.

Increases in revenue are largely due to amendments to the fees charged, including the introduction of a filing fee, which for the first time were fully effective for the entire licence year. Statistics on revenue, number of permits issued and a comparison of types of licences issued are presented in Appendix "A" attached hereto.

APPLICATIONS

The number of applications filed with the Commission continue at a high level, with a total of 3,498 being published by the Motor Carrier Division during the 1988/89 licence year. Of these 776 or 22.19% were for additional vehicles, while 2,722 or 77.81% were for new authority, alteration of existing authority, or transfers of authority. With the exception of applications for additional vehicles, all other applications generally require further investigation before being forwarded to the Commission for decisions.

HEARINGS

During the licence year being reported on, the Commission conducted a total of 82 public hearings which number exactly equals the record number reported in the previous year. Of this number 26 were reviews by the Commission of its own previous decisions, and 56 were formal public hearings. One public hearing alone required a total of 20 full days to complete, the decision on which had not been made by the end of the current licence year.

The Commission scheduled most of its hearings in Burnaby, B.C., but also travelled extensively during the year and held hearings in Abbotsford, Campbell River, Duncan, Victoria, Powell River, Kamloops, Kelowna, Penticton, Smithers, Prince George, Invermere, Cranbrook, Fort St. John and Stewart, B.C.

A number of the more important findings, decisions and Orders of the Commission are attached hereto as Appendix "B".

STATEMENT OF MECHANICAL CERTIFICATION OF VEHICLES

The Commission has, in the past three years, required successful applicants for motor carrier authority, either temporary or permanent, before being issued such authority, to file a statement certifying that vehicles intended to be utilized are in a safe operating condition.

The certification form includes a statement indicating that the individual signing is aware of the requirements of Regulation 6.33 of the *Motor Carrier Act* and Division 25 of the *Motor Vehicle Act* which states that it is the duty of the licensee to maintain his licensed vehicle(s) in a safe operating condition.

These requirements have had a desirable effect in that it makes motor carriers more aware of their responsibility in so far as public safety is concerned.

In addition, all vehicles licensed under the *Motor Carrier Act* are now required to have a Commercial Vehicle Inspection Certificate and must meet National Safety Code standards.

MOTOR CARRIER DIVISION ACTIVITIES

Application procedures were streamlined by reducing the number of forms necessary and by producing information packages to assist carriers in completing the forms. This change, together with other administrative procedural fine-tuning, has reduced the time required to process applications for licence authority or amendments to an average of 45 days.

The activities of Motor Carrier Division inspectors include enforcement through participation in "road-checks" with various other agencies, investigation of complaints and random audits of the activities of licensed motor carriers. The staff also provide informational materials and assist in the training of members of other agencies in motor carrier enforcement.

TARIFF AND TIME SCHEDULES

Motor carriers licensed under the *Motor Carrier Act* are required to file rate schedules with the Commission and to abide by those rates in assessing charges for services provided. Time schedules and changes thereto must also be filed with and approved by the Commission in the case of licensed carriers operating over fixed routes on a time schedule.

The Commission does not regulate extra-provincial or international rates or schedules, although the authority to do so is delegated to the Commission under the *Motor Vehicle Transport Act* of Canada.

The following table sets out the number of tariff and time schedule applications filed during the current licence year compared to previous years. (Figures indicate applications filed during the licence year ending the month of February for each year specified).

	1985	1986	1987	1988	1989
Rate	278	272	172	216	214
Time	44	34	28	14	25

APPENDIX A

SUMMARY OF TOTAL REVENUE FOR THE LICENCE YEAR 1988/89

	$
Licence Fees	3,120,219
Filing Fees	345,421
Temporary Permits	68,122
Miscellaneous	24,271
	3,558,033

REVENUE — ANNUAL COMPARISONS

The following is a comparative table of gross revenue for the last four licence years:

Kind of Licence	1985/86	1986/87	1987/88	1988/89
	$	$	$	$
Passenger (buses)	165,686	164,480	236,957	156,011
Passenger (taxis)	147,517	147,922	157,984	187,213
Public and limited freight	981,984	1,071,027	2,234,932	2,776,995
Permits	28,769	29,414	58,545	68,122
Miscellaneous (including filing)	19,912*	22,516*	152,875	369,692
Totals	1,343,868	1,435,359	2,841,293**	3,558,033***

* The reductions in miscellaneous revenue are the result of changes in accounting procedures recommended by the auditors, which more accurately identify revenue from all sources.

** Increase in revenue is due largely to revisions to the various fees charged, including introduction of a filing fee.

*** Revision to fees charged, in effect for the full licence year.

TEMPORARY OPERATING PERMITS

Temporary operating permits (T.O.P.s.) grant exemption for a stated period of time from the requirements of the *Motor Carrier Act* to obtain a licence (operating authority) or alteration of licence, with respect to the operation of a vehicle in the manner stated therein. The holder of a TOP is subject to the safety provisions of the *Motor Carrier Act* and Regulations to the same extent as if he were operating a licensed vehicle. The issuance of TOPs is at the discretion of the Commission and allows for immediate response to the urgent or emergency requirements of trade and industry or the general public.

The following is a summary of the number of temporary permits issued during the year 1988/89:

Class II permits (for temporary operations as a public or limited vehicle not exceeding 92 days)	3,900
Class III and Class IV permits (for operation of a licensed public or a limited vehicle temporarily in a manner other than is authorized by the licence, or pending consideration of an application for licence, renewal, alteration, or transfer of licence, etc.)	11,520
Special temporary permits (issued for the transportation of household goods to carriers from provinces having reciprocity agreements with the Province of British Columbia respecting commercial motor-vehicle licences)	213
Total	15,633

The issuance of TOPs was reduced by 29% from the 1987/88 licence year. This decline in the use of TOPs is mainly due to two factors: implementing a policy of issuing permanent licence authority within 10 days from the granting of such by the Commission, and reducing the time required to complete the processing of applications to an average of 45 days.

NUMBER OF LICENCES — ANNUAL COMPARISONS

The following table by licence years, gives the number of licences for the various classes issued.

Kind of Licence	Number of Licences, New and Renewed			
	1985/86	1986/87	1987/88	1988/89
Passenger (buses)	2,131	2,095	1,915	1,775
Passenger (taxis)	2,284	2,270	1,991	2,118
Public freight	27,336	29,013	31,140	30,892
Limited freight	3,138	3,957	3,042	2,099
Totals	34,889	37,335	38,088	36,884

APPENDIX B

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

19-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 1773/87 of Walter Rolls.

Before: G. M. MORRIS, *Chairman*, and GEORGE MUSSALLEM, *Commissioner*.

Dated the 17th day of March 1988.

ORDER

The application, published as No. 1773/87, of Walter Rolls (the applicant and holder of one existing Class III Public Freight Vehicle Licence), which if granted would authorize him to transport new and used motor vehicles from the Greater Vancouver Area to points on Vancouver Island, or vice versa, came before the Motor Carrier Commission for hearing on March 14, 1988.

The applicant was represented by a transportation consultant, Mr. Dave Hammell. The two objectors present, Annacis Auto Terminals Ltd. (Annacis) and Auto Haulaway (West) Ltd. (Auto Haulaway) were represented, respectively, by Counsel Mr. D. LaCharite and Counsel Mr. R. W. Macdonald.

In presenting the case for the applicant, Mr. Hammell informed the Commission in his opening address that he planned to call no witnesses, but relented upon the insistence of the objectors who asked that one witness at least be called. Outside of that, Mr. Hammell chose to rely for support wholly on the twenty-four form letters from automobile dealers on Vancouver Island, which were originally filed with the application. He also presented a brief summary at the conclusion of the hearing.

Mr. Hammell asked no questions of Mr. Rolls, the one witness for the applicant, and in fact asked very few questions of the two witnesses called by the objectors. The case for the applicant, as presented by Mr. Hammell, rested entirely on the twenty-four form letters mentioned in the previous paragraph. No other evidence or exhibits were filed by him on behalf of the applicant.

The two witnesses for the objectors generally testified as to difficulties encountered in providing service to Vancouver Island, the territory sought to be serviced by the applicant. They also firmly confirmed testimony heard at a previous hearing (and repeated at this hearing) that the auto manufacturers control the shipment of new cars and pay the freight bills for the transportation, not the dealers. This fact was subsequently agreed to by all participants at these proceedings, including Mr. Hammell.

In coming to its decision with respect to the application under consideration, the Commission cannot help but comment upon the inadequately prepared case ineptly presented on behalf of the applicant by its representative.

It is clear that the nature of evidence presented by the objectors respecting the control of the transportation of new vehicles exclusively by the automobile manufacturers renders useless the twenty-four form letters filed in support of the application by the automobile dealers.

Accordingly, the Commission finds as a fact that no evidence was presented at the hearing to support the application under consideration.

The application of Walter Rolls, published as No. 1773/87, be and it is hereby refused in its entirety for lack of evidence of public need and necessity.

It is ordered that the applicant and the two objectors who participated in this hearing be and they are hereby each assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

G. M. MORRIS
Chairman

GEORGE MUSSALLEM
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

24-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of a Review by the Motor Carrier Commission of its decision concerning the application of Mundie's Towing, Storage & Service (1976) Ltd., published as No. 1613/87.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and GEORGE MUSSALLEM, *Commissioner*.

Dated the 5th day of April 1988.

ORDER

The application of Mundie's Towing, Storage & Service (1976) Ltd. (the applicant), published as No. 1613/87, which had been refused on November 18, 1987, came before the Motor Carrier Commission for review on March 23, 1988.

The applicant was represented by Counsel, Mr. D. Searle, Q.C. The qualified objector, Annacis Auto Terminals Ltd. (Annacis) was represented by Counsel, Mr. D. T. LaCharite. The qualified objectors, Auto Haulaway (West) Ltd. (Auto Haulaway), Len's Lift Truck Delivery Ltd. (Len's), and All-Trac Transport Ltd. (All-Trac), were represented by Counsel, Mr. R. W. Macdonald.

The applicant, which is a transporter of vehicles and specified construction/commercial equipment, through this application sought to remove from its conditions of Licence the two restrictions attached thereto; one having to do with the type and gross vehicle weight as well as the size of the vehicle to be utilized, and the other forbidding the towing of a trailer to transport additional vehicles.

Following the presentation of one witness by Mr. Searle on behalf of the applicant, the participants, after the morning recess, asked for additional time to discuss a proposed amendment to the application. When the hearing resumed, Mr. Searle stated that his client was not interested in getting into the transportation of new and used automobiles and trucks in a big way, and with the concurrence of Messrs. LaCharite and Macdonald formally moved to amend the application by adding to it the following new restriction:

Restriction:

Service as it relates specifically to new and used automobiles and trucks is to be restricted to the use of self-loading vehicles excluding trailers having a maximum carrying capacity of two vehicles.

The application, if granted as amended, would result in the two existing restrictions being deleted from the amended Conditions of Licence to be replaced by the new restriction referred to in the previous paragraph.

After some discussion, both Counsel representing the objectors opposed to the original application announced that their clients in the auto hauling business (Annacis and Auto Haulaway) would not object further, following which the Commission formally granted the motion to amend.

Annacis and Auto Haulaway, though their Counsel, then withdrew their objections to the application and did not participate further in the hearing. Mr. Macdonald remained and continued to represent Len's and All-Trac.

In all Mr. Searle called three shipper witnesses as well as one corporate witness in the person of Mr. R. W. Cowie, president of the applicant company, who testified regarding the history of the company, which began as a towing business, but grew and prospered through the offering of other services to its customers. Mr. Cowie stated that his company now operates a sixteen vehicle towing fleet and four vehicles which are utilized in the transportation of construction/commercial equipment, and that his company employs, together with a related firm, a total of 28 employees.

Referring to the merits of the application, he noted that the existing restrictions on his Conditions of Licence created some problems in that he is asked to transport certain equipment, such as heavy cranes, but because of the weight restriction he is not legally able to move that equipment. Also he has similar problems in moving forklift trucks, for example, as he cannot transport more than one or sometimes two smaller pieces of equipment at one time. Mr. Cowie explained that he merely wanted to provide a better service to his existing customers, who relied on him for their transportation services.

The three shipper witnesses who testified in support of the application were existing customers, who generally spoke very highly of the services provided by the applicant and referred to certain specific pieces of equipment, which for one reason or another could not be transported by the applicant company.

The two witnesses presented by Mr. Macdonald, on behalf of the objectors, noted that the heavy hauling business was now extremely crowded with many carriers being licensed to provide such services. Idle equipment, depressed rates, and extremely keen competition indicate there is no need for additional carriers. In particular, Mr. R. D. Rayner, one of the witnesses who is the owner and manager of All-Trac, addressed what he thought were the problems facing the industry. He also recited the names of a number of carriers, many of them licensed recently to transport heavy equipment, and charged that there were many illegal operators in the field.

Mr. Rayner also raised the fact that because his is a union shop, his labour costs are approximately 38 to 40% of the rates he charges, compared to the 30% paid by the applicant to his non-union owner/operators. This situation made it extemely difficult for him to compete on even terms with the applicant.

The commission has carefully considered all of the testimony at the review hearing, the exhibits filed, and the summations presented at the conclusion of the hearing.

The Commission finds the following facts:

1. The applicant indicated that he did not wish to enter the heavy-hauling business;
2. The applicant's main desire was to arrive at a more efficient service for its existing customers;
3. A change in the applicant's Conditions of Licence to enable the use of a trailer could increase its efficiency by allowing the company to carry several pieces of equipment at one time, rather than making two or more trips;
4. There have been a substantial number of entrants in the light and heavy hauling business in the last five years, which has had the effect of shortening the market share of established heavy haulers with a wide range of equipment designed to serve all shippers;
5. Heavy hauling witnesses at the hearing indicated that at most times they have some equipment out of service because of lack of demand and that in the off-season, a substantial part of their fleets was idle.

Based on these facts, the Commission has determined that the application should be refused, but that the applicant has established a case for some change in its Conditions of Licence to enable it to provide a more efficient and expanded service.

The Commission therefore orders that:

(a) the application to remove the two existing restrictions from the applicant's Conditions of Licence be and it is hereby granted;

(b) the amendment put forward at the hearing to attach a new restriction to the applicant's Conditions of Licence be and it is hereby granted in the wording proposed;

(c) a new restriction be and it is hereby added to the applicant's Conditions of Licence worded as follows:

Restriction

Service under this authority is restricted to the transporatation of loads weighing a maximum of 30,000 lbs. (13 611 kg).

It is further ordered that the applicant and the objectors who qualified to participate in the hearing be each assessed costs equal to and to be set off against the security deposits filed by them beforehand.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

GEORGE MUSSALLEM
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

32-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of Application No. 1653/87 of Brent Koop Yachts Inc. D/B/A Diamond Coach Lines.

Before: G. M. MORRIS, *Chairman* and GEORGE MUSSALLEM, *Commissioner.*

Dated the 27th day of April 1988.

ORDER

The application of Brent Koop Yachts Inc. d/b/a/ Diamond Coach Lines (the applicant), published as No. 1653/87, came before the Motor Carrier Commission for hearing in Burnaby, B.C. on April 14, 1988.

The applicant, which holds six limited passenger vehicle licences in the Province of British Columbia, was represented by Counsel, Mr. Paul B. Joyce. The six qualified objectors were represented as follows: Greyhound Lines of Canada Ltd., Maverick Coach Lines Ltd. and Cascade Charter Service Ltd. by Counsel, Mr. T. Robbins; International Stage Lines Inc., Vancouver Tours & Transit Ltd. and Sybarite Investments Ltd. d/b/a Classic Limousine Service by company officials, respectively, Messrs. R. J. McMynn, S. Eggen and K. Bodnarchuk.

The applicant, by way of this application, was seeking to remove from its Conditions of Licence the restrictions applicable to existing Clause C generally limiting the service provided to specially equipped vehicles transporting persons in wheelchairs, their attendants, and members of the group, association, or club

chartering the bus. The removal of these restrictions would result in the applicant being able to transport any group under charter within Licence Districts 14, 14A and 15 and from points in that area to any point in British Columbia, or to the B.C./Alberta or B.C./U.S.A. Borders.

At the commencement of the hearing Counsel for the applicant noted that his client operated both extra- and intra-provincially, and asked that the hearing be partially conducted under the reverse onus principle provided for by the *Motor Vehicle Transport Act, 1987*. Counsel Mr. T. Robbins pointed out that sections 4 and 5 of that Act provide that bus applications may be dealt with by the Commission in a "like manner" and the hearing could be conducted under the provincial procedures outlined in section 4.18 of the Regulations under the *Motor Carrier Act*. After a brief adjournment the Commission ruled that the hearing would be conducted pursuant to Regulation 4.18.

Following that Mr. Joyce argued that in his view several of the objectors had not complied fully with the requirements of Regulation 4.16 to mail to the applicant and file with the Commission notice of their objections ten calendar days prior to the date set for hearing by the Notice of Hearing. Mr. Robbins, in reply, suggested that as the hearing had been postponed to a later date for the convenience of the applicant at the specific request of the applicant, such an objection was outrageous. The Commission, after hearing representations from the applicant and from the objectors, noted that a Notice of Change of Date of Hearing, as well as a Notice of Change of Date for Filing Objections was mailed to all of those on record as being concerned with the application, and in fact constituted a Notice of Hearing under the terms of the Act. The Commission ruled, therefore, that all of the objectors who had filed their security deposits before the new closing date for meeting the requirements of Regulation 4.16 are fully qualified and therefore could participate in the hearing.

Mr. Joyce then agreed that he was prepared to proceed and called his only witness, Mr. Brent Koop, president and sole shareholder of the applicant company. In his testimony Mr. Koop disclosed that he had originally been in the boat business (thus the name), but was granted licence authority in 1983 to operate three buses. He indicated that his equipment was made up of five coaches at the present time, and he provided work for ten people, including five drivers, three office people, as well as himself and a friend, all full time. He noted the difficulties he had in providing service under the restrictive authority held, which was the reason for the present application under consideration.

Together with his Counsel, Mr. Koop reviewed and elaborated to some extent on the contents of the twenty-four letters of support originally filed with the application and the two additional letters filed at the hearing. He estimated that approximately fifty per cent of his business is derived from work done by his firm for other companies. During cross-examination Mr. Koop testified that Dogwood Tours and Transit Ltd. was not functioning when he had bought its assets and name approximately two years ago for two thousand dollars, and he had paid off all of the creditors except one. At the same time he revealed that he also controlled Diamond Tours Inc. and operated "Dogwood Tours" under the umbrella of that corporation. He admitted that he had made a very bad error in judgement in not filing an application to update his Conditions of Licence, which stipulated that service under Clause B of his authority could only be operated under the auspices of Dogwood Tours and Transit Ltd., and only so long as that firm was registered under the *Travel Agents Act*. He agreed as well that he had in fact been operating illegally in this respect for some two years.

Mr. Robbins called one witness from each of the three objectors he represented, who generally reviewed their own business operations, each of which included scheduled services, charter services, and the operation of a tour company. They expressed the view that another charter operator, if licensed, would only dilute the business available to them, and might in the long term require them to reduce their scheduled services, which in most cases are considered to be a marginal operation as far as profit is concerned. Exhibits were also filed on their behalf relating to their operations, including equipment lists, miles travelled and related information.

The objectors on record, as well as the applicant, presented final argument at the conclusion of the hearing, through which they indicated their interpretation of the evidence presented and recommendations as to the disposition of the application.

The Commission, after carefully considering the total information before them, including the evidence and testimony provided, the exhibits filed, the cross-examination, and final summations presented, makes the following Findings of Fact:

1. In view of the admissions of Mr. Koop with respect to Dogwood Tours and Transit Ltd., it is clear that the applicant for a period of approximately two years has been operating contrary to the restrictions applicable to its existing Clause B;
2. Mr. Koop's admission that his firm charged the Matsqui Rec Centre Group $45.00 per hour for service indicates that the applicant firm is not assessing the rates filed in their tariff at the Motor Carrier Branch;
3. Copies of advertisements filed as Exhibit No. 18 at the hearing strongly suggest that the services offered appeared to be also contrary to the applicant's Conditions of Licence.

While the Commission is prepared to accept Mr. Koop's admission that he made a bad error in judgement by not applying sooner to amend his operating authority, the Commission is undecided whether the failure to amend was carelessness, a disregard for the *Motor Carrier Act* and its Regulations, or an attempt to hide the fact that Dogwood Tours and Transit Ltd. had, in effect, ceased to operate.

In addition, the Commission has considered the Findings of Fact and has concluded that those Findings raise the entire question of the fitness of the applicant.

The Commission views this matter very seriously, and is not prepared to dispose of the application until the applicant has clearly demonstrated his desire to comply fully with the *Motor Carrier Act* and Regulations, to operate entirely within the Conditions of Licence issued, and to offer the public the protection to which it is entitled.

Accordingly, the Motor Carrier Commission hereby defers its decision with respect to this application for a period of at least one year. The applicant be and it is hereby ordered to:

1. File an application immediately to amend restrictions 1 and 2 attached to Clause B so that they conform to present day realities;
2. Arrange to have its tariff brought up to date and charge its customers strictly according to its filed rates;
3. Cease and desist from providing any services that are clearly contrary to its existing Conditions of Licence;
4. File with the Commission six months from the date of this Order and again one year from the date of this Order affidavits signed by a knowledgeable officer of the company confirming if such be the case that they have not engaged in the transportation of passengers contrary to the Conditions of Licence in the interim period.

It is further ordered that the Motor Carrier Branch closely monitor the activities of Brent Koop Yachts Inc. d/b/a Diamond Coach Lines for a period of one year and report any violations of its licence authority to the Motor Carrier Commission should any occur.

It is further ordered that the applicant and each of the objectors who participated in the hearing be and they are each assessed costs in the amount of the security deposits filed by them beforehand, except for Cascade Charter Service Ltd., who filed two security deposits, one of which should be returned to them.

Approved by:

G. M. MORRIS
Chairman

GEORGE MUSSALLEM
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

35-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of Application No. 1936/87 of Atwater Cabs (1978) Ltd.

Before: G. M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner*.

Dated the 10th day of May 1988.

ORDER

The application of Atwater Cabs (1978) Ltd. (the applicant), published as No. 1936/87, came before the Motor Carrier Commission for hearing in Campbell River, B.C. on May 2, 1988.

The applicant, which holds nine limited passenger vehicle licences, was seeking through this application to add a new clause to its Conditions of Licence authorizing the operation of a charter trip bus service from the area of Campbell River and twelve miles therefrom to any point in British Columbia, or the B.C./U.S. Border as part of an extra-provincial service, and return for if arranged for on the same charter.

The applicant was represented by Counsel, Mr. G. Browne. The objector, Roney's Transportation Ltd., was represented by Counsel, Mr. R. W. Macdonald.

In presenting the case for the applicant, Mr. Browne called one corporate witness, Mr. F. Ogilvie, president of the applicant company, and relied as well on the eight form letters of support filed with the application and the six additional letters filed at the hearing.

Mr. Ogilvie generally testified as to his experience in the industry, in particular with the applicant company, and then reviewed the contents of the support material filed in connection with the application. During the course of the testimony, the application was formally amended by the deletion therefrom of that part of the area seeking to be serviced, which reads "to any point in British Columbia or to the B.C./U.S. Border while engaged in an extra-provincial undertaking", and the substitution therefor of the term "to any point on Vancouver Island".

In cross-examination Mr. Macdonald also reviewed the contents of the support filed at the hearing as Exhibits Nos. 2 and 4, and sought to elicit the frequency of service that might be required by the supporters, the type of service needed, the destinations and origins of the service, and the estimated number of passengers that would be transported.

In response to Mr. Macdonald's questions during cross-examination, Mr. Ogilvie indicated that his primary interest was actually in providing service to and from airports located in Campbell River, Courtenay and Port Hardy. Following that disclosure the hearing was adjourned and discussions took place off the record with respect to the actual intention of the application.

When the hearing was reconvened, Counsel for the applicant proposed a further amendment to the application, which in fact had the effect of withdrawing it in its entirety and substituting therefor a proposed new lesser application, which if granted would permit the applicant to provide a charter bus service utilizing vehicles having a maximum capacity of eleven passengers between airports in Campbell River, Courtenay, and Port Hardy. This service would be provided only to the airlines for their passengers or crew.

On hearing this further revision, Mr. Macdonald, on behalf of his client Roney's Transportation Ltd., withdrew its objections to the application in its present state.

The Commission, in carefully considering the application before it, has concluded that it ought to be generally granted.

Accordingly, the Motor Carrier Commission orders that Atwater Cabs (1978) Ltd. be and it is hereby granted the following additional authority:

Charter trips only, transporting airline passengers and crew with baggage from the Campbell River airport to either the Courtenay or Port Hardy airports under charter to any licensed airline; or vice versa.

Restriction:

Service under this clause is restricted to the use of vehicles having a maximum capacity of eleven passengers.

Approved by:

G. M. Morris
Chairman

Ian W. Craig
Commissioner

By the Motor Carrier Commission:

John Kosowick
Secretary to the Commission

Province of British Columbia
Motor Carrier Commission

42-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 89/88 of W. Barker Contracting Ltd.

Before: Ian W. Craig, *Commissioner.*

Dated the 1st day of June 1988.

ORDER

The application of W. Barker Contracting Ltd. (the applicant), published as No. 89/88, came before the Motor Carrier Commission for hearing on May 12, 1988 in Cranbrook, B.C.

The applicant was represented by Counsel, Mr. Paul B. Joyce. The qualified objectors were represented as follows: H & E Rotvold Trucking Ltd. by Counsel Mr. Paul Sabatino; Kiki and Sons Transfer Ltd. by Mr. A. J. Petovello; Jim McDonald Trucking Ltd. by Mr. J. McDonald; Nohels Logging Company Ltd. by Mr. T. Sharp; and West Arm Truck Lines Ltd. by Mr. R. H. Maclean.

The applicant, which was granted one new limited freight vehicle licence on January 5, 1988 authorizing it to transport industrial machinery and accessorial parts for one named shipper, Finning Ltd., under contract

from Cranbrook, B.C. delivered to any point in British Columbia or vice versa, was seeking through this application to be reclassified as a Class III public freight carrier, and at the same time have added to its Conditions of Licence the following additional authority:

Commodities to be carried:	*For Whom to Be Carried:*	*Area, Route or Territory:*
Industrial machinery and equipment including accessorial parts and apparatus, structural steel, pilings, and timbers, construction materials requiring mechanical loading or unloading and requiring the use of truck with semi-trailer (Charter trips).	For one individual or company only at any one time.	(a) Point to point in Licence District No. 1 (b) From area described in (a) above transported to any point in British Columbia and vice versa.

In presenting the case for the applicant, Mr. Joyce called two witnesses. The first was Mr. W. Barker, the president and sole shareholder of the applicant company who testified how he started in the excavating business then added additional new vehicles to transport his own equipment, and how he was asked at times to provide the same service to others, which was the reason he originally applied for motor carrier licence authority earlier this year. He also reviewed with his Counsel the contents of the thirty-nine letters of support filed with the application from businesses located in various areas of the Province, some of which he noted were completely unsolicited by him or his employees.

The second witness called on behalf of the applicant company was Mr. K. Scott, manager of Finning Ltd. in Cranbrook, B.C., who informed those present about his shipping needs, his concern over certain aspects of the service provided by the objecting carriers, and his complete satisfaction with the applicant. He stressed his need for rapid response to calls, efficient service, and reasonable rates.

During cross-examination of Mr. Barker a number of allegations of illegal activities were brought up involving the transportation by the applicant of goods outside the areas it is licensed to serve, and/or providing service to shippers or companies that the applicant is not authorized to serve. In the former case, Mr. Barker's explanation was his lack of understanding of the limitations to his Conditions of Licence, and in the latter cases he stated that Finning had called him for service, but the customer had actually paid the bills, thus making the customer the shipper and the movement contrary to the applicant's Conditions of Licence.

Mr. K. Scott, in cross-examination, was surprised to learn that the applicant was already licensed to provide most of the services required by Finning, although he did cite a number of unusual circumstances wherein this was not the case.

The objectors generally, in presenting their case through cross-examination and their own witnesses, put forward the position that their vehicles were under utilized, there was excessive capacity in this specialized segment of the transportation industry, and no new carriers were required to be licensed at this time. Reference was also made to Mr. Barker's apparent disregard in a number of specific cases for his Conditions of Licence in transporting loads contrary to his authority.

In summation Mr. Sabatino noted that the application was very broad in nature and more extensive in fact than the licence authority held by his client. He also suggested that Mr. Barker's credibility was brought into question because of his assertion that a number of letters of support (which were very similar in form and content) were not solicited. Mr. Sabatino noted that none of the support letters contained any references to lack of service, failure to make deliveries, or delays in service, nor did they give a detailed list of volumes or frequency of service that might be required. He noted also that while Mr. Barker testified that he had been operating legally, he had in fact operated illegally on a number of occasions which he was questioned about.

The other four objectors generally raised the same matters in their summaries and indicated in their view that the application ought to be refused and no additional licence authority issued.

Mr. Joyce, in his summation, pointed out that Mr. Barker had made reasonable explanations with respect to the allegations of illegal activities, and had testified that once he had been made aware of these problems by Inspector Borle he had then operated completely legally. He noted the strong support in the thirty-nine letters filed as Exhibit No. 2, which in his view all express the demand for more service. He pointed out that Cranbrook was becoming a distribution centre for the area and should therefore have another carrier located there. He also pointed out that some of the witnesses, in particular Mr. Scott, had suggested that the economy was showing definite signs of recovery.

Mr. Joyce pointed out as well that Mr. Maclean of West Arm Truck Lines Ltd. was opposing the application although he has very recently been granted very extensive licence authority for his own company. In closing, Mr. Joyce expressed the view that the applicant was indeed a fit carrier, having been recently licensed by the Commission and that the application ought to be granted as applied for.

The Commission, after carefully considering all of the information before it, has concluded that the applicant, having been granted limited freight authority only very recently, was attempting to take a giant step forward to become a major player in the transportation business of the Province, and is not quite ready by attitude, experience, or economics to do so. The Commission is of the view therefore that the application as filed ought to be refused, but the applicant ought to be given some additional licence authority in keeping with the support filed at the hearing, and in order to be better able to serve its existing customers.

Accordingly, the Motor Carrier Commission orders that the application of W. Barker Contracting Ltd., published as No. 89/88, be and it is hereby refused. The Commission, after carefully considering the evidence and testimony of Mr. K. Scott with respect to certain transportation needs that the applicant cannot fill under contract for Finning Ltd., has concluded that the applicant ought to be granted additional authority pertaining to the needs of that particular shipper.

Accordingly, it is further ordered that W. Barker Contracting Ltd. be and it is hereby granted Class III Public Freight Vehicle authority with the addition to its Conditions of Licence of the following new clause:

Commodities to be carried:	*For Whom to Be Carried:*	*Area, Route or Territory:*
Industrial machinery and accessorial parts (Charter trips).	One individual or company only at any one time.	(a) Point to point in Licence District No. 1 (b) From the area described in (a) above to any point in British Columbia, or vice versa.

Restriction

Any transportation services provided under this clause must either originate at or terminate at the premises of Finning Ltd.

The Commission has some difficulty in accepting Mr. Barker's explanation that he was not aware of the scope and limitations of his original, existing licence authority, and in order to prevent any further misunderstanding on his part directs that when new Conditions of Licence are issued, including the authority granted by this Order, they be handed to the applicant by a Motor Carrier Inspector, or other official of the Branch, who will instruct Mr. Barker carefully with respect to the transportation functions he can fulfil, and make him fully aware of the penalties for any further illegal activities.

It is further ordered that the applicant and the qualified objectors who participated in this hearing be and they are hereby assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:
IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:
JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

43-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 51/88 of Brigitte Pfister D/B/A Powell River Transport.

Before: GERARD M. MORRIS, *Chairman* and GEORGE MUSSALLEM, *Commissioner.*

Dated the 1st day of June 1988.

ORDER

The application of Brigitte Pfister d/b/a Powell River Transport (the applicant), published as No. 51/88, came before the Motor Carrier Commission in Powell River, B.C., on May 18, 1988, for public hearing.

The applicant was represented by Mr. Juergen Bruno. The five qualified objectors were represented as follows: City Transfer (1945) Ltd., Sunshine Transport (1984) Ltd., and Triple D Freightways Ltd., by Counsel, Mr. L. R. Peterson, Q.C.; Van Kam Freightways Ltd., by Counsel, Mr. R. W. Macdonald; and J. O. Cawthorpe d/b/a Texada Transfer by Mr. J. O. Cawthorpe.

The application was for three new Class III public freight-vehicle licences authorizing an LTL general freight service as follows:

Commodities to be carried:	*For Whom to Be Carried:*	*Area, Route or Territory:*
General freight	Any individual or company	(a) Between points in LD 13 north of Jervis Inlet, including Texada Island; (b) From the area described in (a) above delivered to points on Vancouver Island: or vice versa; (c) From the area described in (a) above delivered to points in LD 14, 14A and 15: or vice versa.

Mr. Bruno made a brief opening statement at the commencement of the proceedings, during which he read into the record the statement attached to the application. He then called a total of thirteen shipper witnesses, testified himself, cross-examined the witnesses called by the objectors, filed an additional number of exhibits, among them support letters, correspondence, copies of complaints, and other material relating to the application, and also gave a final summary at the conclusion of the hearing.

The general theme put forward by the shipper witnesses who represented a cross-section of businesses located in the Powell River area was the common desire for lower freight rates, more competition, and the opportunity to have a greater choice of carriers. Reference was made in the testimony to what were believed to be excessive rates charged by the presently licensed carriers. There were also some allegations and complaints regarding poor service, delays in service, and lack of service.

In his testimony Mr. Bruno made specific reference to the problems that he himself had experienced with respect to shipments consigned to his own Mother Nature Garden Supply business, in particular with respect to a container-load of product, which he felt was wrongly located on a flat-deck trailer, causing him some serious difficulty in unloading.

The two principal objectors represented by Mr. Peterson (City Transfer and Sunshine Transport) presented two witnesses, through whom they filed their Conditions of Licence, summaries of questionnaires with respect to service furnished, testimony as to the good service provided, and various rate comparisons and other related documentation. Both witnesses responded by giving explanations to the complaints cited by Mr. Bruno with respect to his particular shipment.

Counsel for City Transfer and Sunshine Transport also called Mr. H. McFadden, who had a long experience with trucking in the coastal areas of British Columbia, including Powell River. He drew an analogy of service to Powell River compared to service to Courtenay, two areas of approximately the same distance from Vancouver, and both available only by a combination of land and ferry. In his analogy, he indicated that rates in the Courtenay/Comox area were slightly higher than those being charged in Powell River. He also pointed out that from a cost and time factor, the service to Powell River embracing 88 miles was the equivalent of a truck haul in excess of 400 miles.

No witnesses were called by Van-Kam, but the principals of J. O. Cawthorpe, which provides a service between Powell River and Texada Island, and Triple D, which provides service between Courtenay and Powell River, also testified as to their particular concerns with the application.

The Commission, in considering all of the information presented at the hearing, including the testimony of the witnesses, the exhibits filed, the cross-examination of witnesses and the final summations, makes the following Findings of Fact:

1. A great deal of the support for the application was generated as a result of an advertisement placed in the local paper by the applicant soliciting support and holding forth the promise of better service and substantially lower rates;
2. The applicant presented no specific business plan or satisfactory explanation to justify the rates quoted in the advertisement referred to above;
3. A number of Powell River businesses currently transport their own freight in their own vehicles for a variety of reasons, including lower cost and personal care of their own merchandise;
4. This situation has been true for many years in Powell River because in a number of cases, such businesses find that paying justifiable freight rates prevents their competing with larger merchants who transport their own merchandise and do not rely on the available commercial freight carriers.

The Commission is fully aware of the history of road transportation in the Powell River area and the licensed carriers in the past who have tried and failed in an effort to provide a lower rate freight service over a route which requires two ferry crossings and travel over miles of secondary highway.

The Commission has concluded that the applicant has failed to justify the need for additional service of the type applied for to the area, and feels that the licensing of an additional LTL carrier, either scheduled or unscheduled, would not be in the public interest at this time.

Accordingly, the Motor Carrier Commission orders that the application of Brigitte Pfister d/b/a Powell River Transport, published as No. 51/88, be and it is hereby refused in its entirety.

It is further ordered that the applicant and the objectors present are each assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

G. M. MORRIS
Chairman

GEORGE MUSSALLEM
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

44-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of Application No. X2022/87 of Sokil Express Lines Ltd.

Before: GERARD M. MORRIS, *Chairman*, IAN W. CRAIG, *Commissioner* and GEORGE MUSSALLEM, *Commissioner*.

Dated the 1st day of June 1988.

ORDER

The application of Sokil Express Lines Ltd. (the applicant), published as No. X2022/87, came before the Motor Carrier Commission for hearing in Burnaby, B.C., on May 9, 1988. Argument was heard on May 10, 1988.

The applicant sought through this application an amendment to its existing licence authority, which, if granted, would permit the said applicant to provide an LTL general freight service from any point in B.C. delivered to the boundaries of British Columbia with Alberta, Northwest Territories, Yukon Territory, and the U.S.A., or vice versa as part of an extra-provincial operation.

The applicant was represented by Counsel, Mr. D. Dley. The three qualified objectors, Byers Transport Ltd., Canadian Pacific Express & Transport Ltd., and Reimer Express Lines Ltd., were represented by Counsel, Mr. Tobin Robbins.

Pursuant to the *Motor Vehicle Transport Act, 1987*, the hearing was held entirely under the reverse-onus procedure, with the objectors first presenting their evidence seeking to establish that the proposed operation would likely be detrimental to the public interest.

Mr. Robbins called as witnesses Messrs. B. N. Smith, D. Bruyere, and R. Burmaster, each being a company official of one of the objecting firms. They generally reviewed with Mr. Robbins the books of exhibits filed by their own firms at the hearing, making reference to the points served, terminal locations and profiles, licence authority held, the significant economic contribution to British Columbia, including money invested and spent, and statistics with respect to the type, size and number of packages and freight transported.

Each witness pointed out that there was only so much freight to be carried, and any new entrants into the type of service being sought by the applicant would take tonnages away from the present scheduled LTL operators, who, in turn, could be forced to increase rates, reduce their scheduled service, particularly to smaller towns or villages which provide a marginal economic return, or, in extreme cases, abandon such service entirely. Statistics contained within the books of exhibits filed indicated that smaller shipments up to five thousand pounds comprised a large percentage of the freight carried by the existing carriers.

At the conclusion of the objectors' case, Mr. Dley advised that he would be calling no witnesses, following which the Commission agreed to the request of Counsel for the objectors that argument be proceeded with on the following day.

Mr. Dley, in summing up, argued that no evidence had been presented by the objectors that the granting of the application would likely be detrimental to the public interest. Furthermore, there was no specific evidence that the industry is in a depressed condition, or will be hurt if the application is granted. On the contrary, he indicated that the evidence presented showed a healthy, competitive industry. He noted that each

of the objecting companies had trucking divisions within them that appeared to be doing well, and even those that commenced business very recently appeared to be thriving. There was no evidence that the scheduled service offered by the objectors was losing money or was uneconomical.

Mr. Dley noted that the witnesses called by the objectors used terms such as "might", "could", or "possibly could" with respect to the effect on their company if the application were granted, and noted that none had stressed "it was likely" that there would be a detrimental effect if the application were granted. There was a good deal of speculation and conjecture put forward by the objectors about what might happen, but no financial data supporting this view was filed by them. He reminded those present that the applicant's previous application granted in 1984 had been strongly objected to and predictions made about the dire consequences to the objectors, but nothing had changed and the objectors all appeared to be doing quite well. He asked in closing that the application be granted.

Mr. Robbins, in presenting his final argument, quoted extensively from a speech on the *Motor Vehicle Transport Act, 1987*, delivered recently by Mr. Norquay, Chairman of the Manitoba Motor Transport Board, to the Manitoba Trucking Association Convention. Mr. Norquay put forward the position that regulators of motor carriers, despite the new federal act, must continue to regulate, use their discretion and address the facts and circumstances of the particular case before them. Mr. Robbins asked the Commission to examine carefully the facts placed before them at this hearing.

Mr. Robbins pointed out the total absence of information respecting the application, the fact that no viva voce evidence was presented, and that not even the president of the applicant company, who was present, had been called as a corporate witness, and thus there was no opportunity to test the validity of the application through cross-examination. As a result, no-one could establish with any certainty the aspirations comprehended in the application and the effect of granting it would have. The objectors, all experienced carriers, assumed the applicant would seek initially to transport shipments weighing over 5,000 pounds, because such shipments are easily available and do not normally require the use of terminals. This would be detrimental to the objecting carriers and pose a threat to their ability to fully service their customers as in order to do so, they need an assured mix of types of freight from small packages upwards.

In closing, Mr. Robbins noted that the only evidence before the Commission is that provided by the objectors outlining the potential detrimental effect on users, including increase in rates and reduction or suspension of scheduled service in smaller remote communities. He pointed out that the applicant had not provided any indication that the interests of the shipping public would be served by granting the application and there was a real danger that the granting of the application would be to the detriment of shippers. The application therefore should be refused.

The Commission is well aware of its responsibilities, its discretionary powers, and its limitations under the *Motor Vehicle Transport Act, 1987*, and the Regulations attached thereto, and its own Policy and Procedural Guidelines. The Commission does not see the Act as being completely deregulatory and intends to do its legislative duty within the limitations under which it must work, and will continue to adjudicate each application on its own merits. The Commission believes that this view and intention is shared by many, if not most of the Boards or Commissions which regulate motor carriers in the other provinces or territories.

In this particular case, the applicant is a well-known established firm which has extensive licence authority in Alberta and British Columbia. There is little doubt that the applicant has the ability to offer general or selective service which can markedly affect the operations of carriers now providing scheduled LTL service throughout the Province.

The Commission is compelled to express its disappointment with the participants in this case and in respect to the objectors, the Commission must point out that no specific evidence of public detriment was proffered, the objectors failed to take the opportunity to call witnesses from the shipping public who might be concerned with the preservation of regular scheduled service, nor did the Commission have the opportunity to hear from any municipal representatives or business organizations who are concerned with the economic stability and growth of communities throughout the Province.

The Commission is also disappointed with the applicant who chose to call no witnesses, not even a corporate witness, and relied entirely on cross-examination and summation by Counsel.

The Commission wishes to call to the attention of all those in the transportation industry who might be applicants or objectors that there is a direct onus on them to provide a strong indication of support and/or documentation detailing the advantages or disadvantages to the shipping public. Commissions and regulatory boards have a specific responsibility to ensure stability within the transportation industry and also to ensure that the public is as well served as possible. Without adequate assistance from those concerned with presenting or objecting to applications, regulatory bodies cannot fail to be hampered in ensuring that the public interest, which is paramount, is properly served.

After considering all of the material which came before it prior to and during the hearing, the Commission feels that, in this case, it has no option but to grant the application.

Accordingly, the Motor Carrier Commission orders that Application No. X2022/87 of Sokil Express Lines Ltd. be and it is hereby granted.

The Motor Carrier Commission further orders that the security deposits filed by the applicant and qualified objectors be set off against the costs of this hearing.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

GEORGE MUSSALLEM
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

45-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Kurt Adelborg and Donald William Johnston, Application No. 3209/85.

Before: G. M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner*.

Dated the 1st day of June 1988.

ORDER

Whereas the application of Kurt Adelborg and Donald William Johnston (a partnership), published as No. 3209/85, for one new limited passenger vehicle (taxi) licence was granted by Order dated April 15, 1987; and

Whereas the Commission was reliably informed in February of 1988 that contrary to the requirements of Regulation 6.02 of the *Motor Carrier Act*, which reads as follows:

> A licence may be cancelled if the licensee fails to begin service within 30 days after the date upon which the licence was granted.

the said applicant had not yet commenced service; and

Whereas the Commission has concluded that it would be in the public interest, in view of the failure of the applicant to commence service, to invoke the powers contained in Regulation 6.02 of the *Motor Carrier Act* to cancel the licence authority previously granted.

Whereas by letter dated March 5, 1988 the Commission was assured by Mr. Johnston (one of the partners) that service would be commenced within 30 days; and

Whereas the Commission is now reliably informed that no service has been commenced to this date, and further that the partnership has been dissolved with the partners going their separate ways; and

Whereas the Commission has concluded that it would be in the public interest, in view of the failure of the applicant to commence service, to invoke the powers contained in Regulation 6.02 of the *Motor Carrier Act* to cancel the licence authority previously granted.

Accordingly, the Motor Carrier Commission orders that the licence authority granted to and in the name of Kurt Adelborg and Donald William Johnston be and it is hereby cancelled and any rights or privileges conferred on the partnership by the original granting of the licence authority be and they are hereby extinguished.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

49-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act, 1987*, Chapter 35; and in the Matter of Application No. X40/88 of Burns Foods (Transport) Ltd.

Before: GERARD M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner.*

Dated the 8th day of June 1988.

ORDER

The application of Burns Foods (Transport) Ltd., (the applicant), published as No. X40/88, came before the Motor Carrier Commission in Burnaby, B.C., on June 6, 1988, for hearing.

The applicant was represented by Counsel, Mr. L. H. Jacobson, and the qualified objectors were represented by company officials as follows: CP Express & Transport Ltd. and Byers Transport Ltd. by Mr. B. N. Smith; Reimer Express Lines Ltd. by Mr. R. E. Burmaster; and Futura Transport (1980) Ltd. by Mr. D. Harwood.

At the outset of the hearing, the applicant, through Counsel, moved to amend the application under consideration by adding thereto the restrictions which follow:

Restrictions:

1. Commodities moved under this particular clause must be transported in temperature-controlled vehicles;
2. Shipments transported under this particular clause from any one consignor to any one consignee at any one time must exceed 5,000 pounds (2 300 kg) in weight.

The Commission, after some discussion, granted the motion to amend, upon which the four objectors formally withdrew their opposition to the application, as amended, and took no further part in the proceedings.

In a decision delivered from the Bench, the Commission granted the application as amended, which decision it was announced would be confirmed by way of a written Order to follow in a few days.

The Motor Carrier Commission does hereby confirm its oral decision granting the application of Burns Foods (Transport) Ltd., published as No. X40/88, as amended at the hearing on June 6, 1988.

It is further ordered that the applicant and the objectors present are each assessed costs in the amount of the security deposits filed by them beforehand.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

49-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act, 1987*, Chapter 35; and in the Matter of Application No. X40/88 of Burns Foods (Transport) Ltd.

Before: GERARD M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner.*

Dated the 8th day of June 1988.

ORDER

The application of Silver Fox Coach Lines Ltd. (the applicant), published as No. 717/88, to provide a charter bus service for one named corporately-related shipper, Hi-Way Holidays Inc., from the City of Vancouver and points situated within forty-five miles therefrom (excluding certain areas, and Vancouver Island) as part of an extra-provincial service, came before the Motor Carrier Commission on August 8, 1988, for public hearing.

The applicant was represented by Counsel, Mr. Paul Sabatino. The three qualified objectors who participated in the hearing, International Stage Lines Ltd., Vancouver Tours & Transit Ltd., and Sybarite Investments Ltd. d/b/a Classic Limousine Service, were represented by company officials, respectively Messrs. B. McMynn, S. Eggen, and G. Bodnarchuk. Alpine Coach Lines Ltd., which qualified as an objector, did not attend and was not represented at the hearing. Perimeter Transportation Ltd. was ruled out on a technicality, and Greyhound Lines of Canada Ltd., which had filed the required security deposit and indicated it would participate in the hearing, withdrew its objections to the application by letter from its Counsel dated August 5, 1988.

In presenting the case for the applicant, Mr. Sabatino called a total of 13 witnesses, including the president of the company, Mr. James C. Bower, Mrs. Bower (the manager of Hi-Way Holidays Inc.), a number of employees, including office staff, tour guides, tour directors, and a bus owner/driver, as well as individual customers and other interested parties. In addition, various exhibits were filed at the hearing, including supplementary letters of support from other travel organizers, equipment lists, brochures, and other related documentation.

The applicant at the present time is providing a charter bus service to various points such as Reno, Yellowstone, California, Swinomish, and other destinations through an arrangement with a licensed motor carrier, Alpine Coach Lines Ltd., which firm, by agreement, provides coaches when the applicant requires more vehicles than those it has under its own control.

The witnesses who testified on behalf of the applicant generally praised the service provided by the company and its president, Mr. Bower, and expressed satisfaction with the tours, but raised some questions regarding coaches supplied by other carriers, as well as the drivers provided by them.

Mr. Bower, in testifying, explained the problem he is faced with because of his dependence on other carriers for coaches which, he claimed, at times are not suitable, not up to standard, not mechanically sound, are too costly, or may have drivers who are not well acquainted with pick-up points, destinations, stop-over points, or who attempt to solicit customers for their own firms.

Mr. Bower asked that he be licensed in the limited manner applied for so he could operate the tours arranged by Hi-Way Holidays Inc., a corporately-related firm which he controls and which is operated to a great extent by his wife. He noted that other licensed bus companies also operate corporately-related travel and tour organizations, and expressed the desire to be able to compete with them under the same rules.

During the course of Mr. Bower's testimony and cross-examination, a number of issues were thoroughly canvassed, including certain written material filed at the hearing as exhibits that he authored or was suggested to have authored; an incident concerning a breakdown of one of his own coaches at which time it was alleged a bolt was placed in a frayed or broken brake-line; his involvement previously with another bus and/or tour related company or companies; his arrangement with another motor carrier licensed firm, Alpine Coach Lines Ltd.; allegations regarding the driver of a coach provided by International Stage Lines Ltd. who was not familiar with pick-up points of passengers; Mr. Bower's plans of operation and the relationship between the applicant company and Hi-Way Holidays Inc.; and the two new Eagle coaches recently purchased by the applicant.

A total of four witnesses was called by the objector, International Stage Lines Ltd., one of them, Mr. Aldridge, being shared with Vancouver Tours and Transit Ltd. Mr. Aldridge testified with respect to the "bolt in the brake-line" incident which he felt had taken place but was not referred to in a copy of the invoice covering the work under discussion, which was done in the garage operated by Alpine Coach Lines Ltd.

Mr. Randy Pullman also was called as a witness. He testified as to his wide experience with respect to Reno trips for International and the fact that he had very little notice to do the work referred to for the applicant, at which time he admitted he was not completely familiar with one pick-up point located at Cloverdale, B.C.

Mr. Peter Dakha, general manager designate for International Stage Lines Ltd., testified regarding the equipment owned and operated by that company, its driver policy when supplying coaches for other firms, and the utilization of their fleet of buses.

Mr. McMynn then took the stand, during which time he made reference to certain portions of Mr. Bower's testimony and filed an exhibit, a portion of which, it was conceded, had been authored by Mr. Bower, although it was not signed by him.

Mr. Bodnarchuk, who did not call any witnesses, expressed the view in final argument that no proof of need had been demonstrated, no driver training or maintenance program had been implemented by the applicant, and there was no proof of financial stability on his part.

Mr. Eggan, in final argument, noted, first, that Mr. Bower was merely copying the rates charged by the competition and, secondly, that coaches could be made available to the applicant on request by other operators. He concluded by suggesting that the granting of the application would not be in the best interest of the public.

Mr. McMynn felt that there were some discrepancies in Mr. Bower's testimony and charged that he wanted quality buses but was not prepared to pay the price. In this regard he noted that Mr. Bower had quoted several of a number of bad experiences with Alpine Coach Lines Ltd., but nonetheless has continued to use that firm. He asked that the application be refused as it would not be in the public interest to grant it.

Mr. Sabatino, in his final summary on behalf of the applicant, noted that the application was very clear. It is for five vehicles with service being provided to a corporately-related firm, Hi-Way Holidays Inc., and to this firm only. He noted that Mr. Bower had testified that 90% of his ridership was repeat business and the applicant's customers are extremely loyal.

He went on to say that there were a substantial number of witnesses and strong written support for the application, which indicated a strong public demand for this service. New vehicles had been purchased and would be ready to put into service very shortly so that an excellent high-quality service could be provided to those loyal customers and others as well, of course.

He felt that the allegations regarding the bolt in the brake-line had been disproved by the invoice which was entered as an exhibit, and noted that arrangements had been made for further maintenance to be carried out locally by a highly respected firm and should therefore be of no concern in the future. In closing he asked that the application be granted as applied for.

The Commission, after carefully considering all of the evidence, testimony and cross-examination, exhibits and summation presented at the hearing, makes the following Findings of Fact:

1. Mr. Bower is an experienced tour operator who has an intensely loyal following of satisfied customers, in particular, senior citizens;
2. Employees who have been associated with Mr. Bower for some years consider him to be a fair and competent employer and apparently enjoy their association with him;
3. Mr. Bower, unfortunately, in oral and written testimony makes statements in such a way that they are often inexact, confusing or, at times, misleading, to the extent they cast doubt on his credibility;
4. While there are other tour operators who serve the public without benefit of a corporately-related motor carrier, the applicant appears to be at a disadvantage in this respect;
5. The applicant obviously provides or attempts to provide a quality service with an accent on personal attention to its patrons;
6. No specific evidence was lead that the granting of the application would impair the ability of the objectors to serve the public well or jeopardise that service to the extent that it would be detrimental to the public.

Accordingly, the Motor Carrier Commission orders that the application of Silver Fox Coach Lines Ltd., published as No. 717/88, be and it is hereby granted as follows:

Terminal point: Burnaby, B.C.

Service to be provided: To transport a person or group of people under contract to Hi-Way Holidays Inc., from Vancouver and points situated within a distance of forty-five (45) road miles from its boundaries, excluding that area north of Horseshoe Bay, the Sechelt Peninsula, the Gulf Islands and Vancouver Island, to the boundaries of British Columbia, while engaged in an extra-provincial undertaking, and return if arranged for on the same charter.

Restrictions

1. Service under this clause may only be provided to persons involved in a tour with Hi-Way Holidays Inc. that includes transportation, accommodation where required, and host or hostess assistance.
2. This licence is restricted to the operation of vehicle/vehicles with a carrying capacity of not less than 11 passengers and not more than 49 passengers, exclusive of driver.
3. This particular applicant is restricted to the operation of a maximum of five vehicles for a period of eighteen (18) months.

It is further ordered that the applicant and the objectors, Vancouver Tours & Transit Ltd., International Stage Lines Ltd., and Sybarite Investments Ltd. d/b/a Classic Limousine Service, be and they are hereby each assessed costs in the amount of the security deposits filed by them beforehand.

It is further ordered that the security deposit filed by Alpine Coach Lines Ltd. be and it is hereby forfeit; the security deposit filed by Perimeter Transportation Ltd., who was ruled out on a technicality, be refunded; and the security deposit filed previously by Greyhound Lines of Canada Ltd. be returned.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

GEORGE MUSSALLEM
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

79-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of a Review by the Motor Carrier Commission of its decision concerning the application of Kulwant Singh Sarowa, published as No. 964/88.

Before: G. M. MORRIS, *Chairman*.

Dated the 28th day of October 1988.

ORDER

The application of Kulwant Singh Sarowa (the applicant), published as No. 964/88, which had been previously refused, came before the Motor Carrier Commission on October 21, 1988 for review.

The application being reviewed was for four new limited passenger vehicle licences to provide a taxi service originating within the Matsqui/Abbotsford area, transporting passengers to any point in British Columbia.

The applicant was represented by the son of the applicant, Mr. Surinder Sarowa. The two objectors present, Abbotsford Taxi Ltd. and A & A Cabs (1987) Ltd. were represented by Counsel, Mr. Paul Sabatino.

In presenting the case for the applicant Mr. Sarowa did not call any witnesses, but took the stand himself and testified. In addition, he filed two exhibits, cross-examined the witness called on behalf of the objectors, and presented argument at the conclusion of the hearing.

The two exhibits filed consisted of statistical information with respect to the high population growth experienced in recent years by both Matsqui and Abbotsford (the area sought to be served by the applicant) as well as a petition containing some sixty names supporting the application under consideration.

In his testimony Mr. Sarowa also referred to the high growth rate in the population of the Matsqui/Abbotsford area. He indicated that many of the people moving into the area were older and thus would require taxi services. The two areas sought to be served cover some ninety square miles and are growing, therefore in the view of Mr. Sarowa should have a competitive taxi service, which he felt would improve the service.

Mr. Sabatino, in presenting the case for the objectors, called one witness, cross-examined the witness on behalf of the applicant, filed additional exhibits including five letters of commendation for good service provided by the objectors, and presented argument at the conclusion of the hearing.

During cross-examination of Mr. Sarowa by Counsel for the objectors it was revealed that start up costs for the taxi business had been estimated by the applicant to be approximately $50,000 to $60,000 dollars. It was planned to purchase four vehicles at approximately $10,000 to $12,000 dollars each which would be dispatched from an office space at the back of a food store. No enquiries had been made by the applicant regarding the cost of car insurance, taxi meters, roof lights, radio frequencies or equipment, painting, or providing a dispatch. It was admitted as well that none of the three partners concerned with the application had any relative taxi experience except for the named applicant who had driven a cab nearly twenty years ago in Calcutta, which operated on a flag system without a dispatch.

It was revealed also that no business plan, cost estimate, or formal analysis had been prepared with respect to this business venture. It was further admitted by the witness for the applicant that 70% of those signing the petition in favour of the application were not in fact regular users of a taxi service.

Mr. Hansen, an official with Abbotsford Taxi Ltd., testified on behalf of the two objectors. He informed the Commission that between them the two firms had nineteen vehicles of which eighteen were licensed, but in most cases only 10 to 12 cabs were in operation at any one time. The only time there is a real rush is on welfare days, Christmas, or New Years when the entire fleet is pressed into service. A significant share of revenue is derived from contract services provided to the post office and the school district.

Mr. Hansen testified that both objectors operate out of a thousand square foot office space in downtown Abbotsford and employ approximately nineteen full-time and the same number of part-time drivers, as well as six to eight dispatchers plus some office staff and a full-time mechanic and helper.

He also indicated that he did not feel that any additional service is required and that there is competition at the present time in the area from a firm operating under the name of Central Valley Taxi (formally Aldergrove Taxi) whose cabs had recently been sighted in the Matsqui area. Mr. Hansen noted as well that although the population of the area had grown, many of those moving in could afford one or two cars and thus did not require taxi service. Mr. Hansen maintained that his daily income sheets had not increased in recent years except by the amount of various rate increases and no more vehicles were being operated.

As indicated earlier, this hearing was called in order to review a previous decision refusing the application of the said applicant.

In effect, the Commission has given this applicant a second chance to present a more convincing case. This could be accomplished by calling witnesses, filing exhibits, by cross-examining the objector's witnesses, and finally, by presenting an argument which would highlight the evidence presented of public need and necessity.

Instead, the applicant provided very little new, relative, or useful information. A petition bearing some sixty signatures was encouraging, but failed as effective evidence when the applicant's only witness admitted that probably some 70% of those signatures were not regular users of taxi service.

There was no evidence of undue delays in providing service, lack of service, or inadequate service. In fact there was evidence lead to the contrary which was supported by five letters of commendation of good service provided by the objectors. There was also evidence that there was competition in the area from another taxi company as well as the two corporately related firms present at this review hearing.

In short, no evidence has been presented to convince the Commission to alter its original decision to refuse the application.

Accordingly, the original decision of the Commission refusing the application of Kulwant Singh Sarowa, published as No. 964/88, be and it is hereby Confirmed.

Approved by:
G. M. MORRIS
Chairman

By the Motor Carrier Commission:
JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

80-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 1086/88 of Trentway-Wagar Inc.

Before: GERARD M. MORRIS, *Chairman* IAN W. CRAIG, *Commissioner.*

Dated the 4th day of November 1988.

ORDER

The application of Trentway-Wagar Inc. (the applicant), published as No. 1086/88 (for transfer to it of all limited passenger-vehicle licence authority from Alpine Coach Lines Ltd. and thereafter establish uniform Contitions of Licence), came before the Motor Carrier Commission on October 24, 1988, for hearing.

The applicant was represented by Counsel, Mr. Robert B. Warren. The objectors were represented as follows: Velvet Tours Ltd. (Black Velvet Coach Lines), Pacific Northwest Bus Company Ltd. (Gray Line of Vancouver), Greyhound Lines of Canada Ltd., International Stage Lines Inc., Maverick Coach Lines Ltd., Perimeter Transportation Ltd., and Vancouver Tours and Transit Ltd., by Counsel, Mr. L. R. Peterson, Q.C.; Sybarite Investments Ltd. d/b/a Classic Limousine Service by a company official, Mr. Glen Bodnarchuk; and Adventure Coach Lines Ltd. by a company official, Mr. Bob Colborne. The Gray Line of Victoria Ltd., who qualified as an objector, did not appear and was not represented at the hearing.

In presenting the case for the applicant, Mr. Warren first made an opening statement in which he outlined the relationship between the applicant company (which is a subsidiary of Trentway-Wag Properties Ltd., a subsidiary of Gray Coach Lines Ltd., which, in turn, is a wholly-owned subsidiary of the Toronto Transport Commission), and how the operations of the latter are supported through the fare box and subsidies from the Government of Ontario and also from Metropolitan Toronto. He noted that the issue of subsidy had been raised before this hearing and that the Canadian Transport Commission, after investigation, found that there was no flow-through of funds to the applicant company from the public purse, and the applicant therefore had no unfair advantage over other operators.

Mr. Warren noted that this was merely an application for transfer. There was no question of dormancy as the transferor company, Alpine Coach Lines Ltd., has been operating and continues to operate even during this hearing. There are no unsatisfied creditors and the applicant will operate with British Columbia management and staff. Furthermore, the applicant is a fit and proper operator, which seeks to compete on an even footing with other licensed carriers and has not, nor does it desire, any unfair competitive advantage.

Counsel for the applicant then called as his only witness, Mr. J. Devlin, president of the applicant company, who rounded out the historical background on the status of the applicant. He noted that it operated some 300 vehicles, mostly school buses, but including 60 coaches, the vast majority of which were centred in the heartland of Ontario. He noted as well that his firm had been licensed in British Columbia since 1980 and that the president of Alpine Coach Lines Ltd. had been asked to head up the British Columbia division of the

applicant company if the application is granted. He also confirmed in his testimony that the applicant company did not receive any subsidy directly or indirectly from the public purse.

Several exhibits were filed by Mr. Warren, including a certified copy of a decision of the Motor Vehicle Transport Committee of the Canadian Transport Commission (Exhibit No. 9) stating in part:

> Gray Coach has not received substantial advantages by reason of its relationship to the T.T.C., nor does it receive, directly or indirectly, public subsidies by virtue of this relationship.

In addition, a portion of the *Municipality of Metropolitan Toronto Act*, Chapter 314, was filed, section 104 of which specifies that no further investment in the capital stock of Gray Coach Lines Ltd. shall be made by T.T.C., nor shall the capitalization of Gray Coach Lines Ltd. be increased until the consent of the Metropolitan Council is obtained thereto.

Mr. Peterson called two witnesses, Mr. R. N. Parke, a vice-president of Greyhound Lines of Canada Ltd., and Mr. W. G. Coles, president of Maverick Coach Lines Ltd., both of whom generally opposed the application on the grounds that the applicant had an unfair competitive advantage because it was, in essence, a subsidized operation.

Mr. Parke, who has been employed by Greyhound for some 38 years, postulated that should there be further erosion of charter trip traffic, which his firm uses to cross-subsidize the extensive scheduled services provided, such scheduled services, particularly the uneconomic ones, might have to be reduced or abandoned entirely. He also testified that Greyhound already has to compete with Via Rail, which is heavily supported from the public purse, as well as charter airlines who are reducing fares, all of which has resulted in a reduction by 6% in scheduled bus ridership over the last year.

Mr. Coles noted in his testimony that extensive public charter bus service in British Columbia had been privatized in 1984. He testified that those services were costing the Province of British Columbia eight to ten million dollars a year in subsidies. His own firm bid for and was awarded a certain section of this public authority and he claimed that a better service was being provided and obviously previous subsidies had been totally eliminated. His firm also operates a scheduled service to the Whistler area which he suggested could well be at risk if ridership is further reduced by continued erosions by one type of service or another being able to serve the territory.

While Mr. Bodnarchuk and Mr. Colborne did not call any witnesses, they both availed themselves of the opportunity to present a summary at the conclusion of the hearing, the latter objector noting that his objections were largely based on philosophical grounds. In this regard he was of the opinion that government should provide only those services that the free enterprise system cannot economically operate. He also recited the advantages he felt the applicant received by virtue of their exemptions from income tax, the availability to financing at a better interest rate, and access to certain markets, etc. Mr. Bodnarchuk, in turn, felt that the applicant paid too much for goodwill in connection with the transfer. He also noted the benefits the applicant enjoyed, analyzed the Conditions of Licence being acquired, and closed by noting that he was generally opposed to the selling and/or trading of licences.

Mr. Peterson, in his summary, noted that the Commission has the discretion under section 7 of the *Motor Carrier Act* and Regulation 5.23 to refuse an application for transfer of a licence authority. He expressed the view that, in this case, the applicant must prove that the granting of the application would be in the public interest. In this regard he noted that there was no evidence of lack of service, or poor service, and that the existing licensees could accommodate all of the demands for service.

Mr. Peterson then went on to suggest that although the applicant wished to appear to be an ordinary private carrier, and while he himself was prepared to concede that no direct subsidies were involved, the applicant's profits flow directly to its ultimate master, the Toronto Transport Commission, which calls the shots. Furthermore the applicant in its new relationship to Gray Coach and the T.T.C. is no longer required to pay federal income tax, has access to a better credit rating, and the potential for enjoying other benefits on a scale unavailable to the objectors to the application, and the power inherent in its relationship to the T.T.C. places the applicant in an entirely different position to the average private bus company in British Columbia. He also suggested that if the corporate veil were lifted, this applicant could be considered as the T.T.C. through its subsidiaries entering open competition with private enterprise companies. He suggested this was the antithesis of public policy by virtue of the Province's current privatization moves and its previous abandonment of direct bus services. In closing, he asked that the application for transfer be refused, as the applicant has obvious unfair competitive advantages, but if the application were granted, the number of vehicles licensed should be restricted to the maximum presently being utilized, that is four vehicles.

Mr. Warren, in his summary, first noted that Mr. Peterson had agreed that there was no evidence that the applicant is in receipt of any subsidies. He noted that the application for transfer, which in his view was a presumptive right, could be refused only if there was finding by the Commission that approval would not be in the public interest.

He noted as well that in the written objections filed in these proceedings as Exhibit No. 3, the opposition had been based on three grounds: one, state ownership; two, a negative effect on the operations of the objectors; and three, a negative effect on employment in British Columbia, each of which had been responded

to and generally refuted during the course of the hearing. There was no evidence of any subsidies flowing to the applicant or that the objectors would suffer. He also noted that the two objectors giving testimony appeared to be doing very well financially and further that his client would make a direct contribution to the British Columbia economy by the employment of British Columbia personnel in its operations. He noted further that only two witnesses were called on behalf of the objectors, who could not possibly be representative of all of those opposing the application.

Mr. Warren pointed out what he called a rich irony in that private operators were coming before a government agency asking for protection from a good efficient unsubsidized operator. He asked, in closing, that the application be granted as filed.

The Commission has concluded from the total evidence before it, including the testimony, exhibits and summaries presented at the hearing, the following facts:

1. That on the evidence it is clear the applicant does not receive direct or indirect subsidies from the public purse;
2. That by virtue of its relationship to Gray Coach and the Toronto Transport Commission it is now no longer required to pay income tax and, at the same time, it does not have available to it some of the advantages it enjoyed previously under the income tax provisions;
3. That no clear uncontrovertible evidence of detriment to the pulbic interest was presented by the objectors;
4. That the concern of the objectors was based on an uneasy perspective rather than determinable fact;
5. That approving the application for transfer will not place an additional entrant into competition as the transferor is operating at the present time;
6. That there is every likelihood that the applicant may be more efficient and aggressive a competitor than its predecessor.

The Commission believes that a case has been made for granting the transfer, but that there should be some reasonable limitations placed upon the operations of the applicant.

Accordingly, it is ordered that the application of Trentway-Wagar Inc., published as No. 1086/88, be and it is hereby granted, but the said applicant is to be restricted to 13 operating certificates, the number renewed by Alpine Coach Lines Ltd. for the 1988 licence year.

It is further ordered that costs be and they are hereby assessed on the applicant and the objectors on record at this hearing, to be set off against the security deposits filed by them beforehand, except in the case of International Stage Lines Ltd. who, having had two $50 security deposits filed, are to have one refunded.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

82-88

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of the *Motor Vehicle Transport Act*, S.C. 1987, Chapter 35; and in the Matter of Application No. X1332/88 of Tanya Truck Lines Inc.

Before: G. M. MORRIS, *Chairman* and IAN W. CRAIG, *Commissioner*.

Dated the 9th day of November 1988.

ORDER

The application of Tanya Truck Lines Inc. (the applicant), published as No. X1332/88, came before the Motor Carrier Commission on October 31, 1988 for public hearing.

The applicant was represented by Counsel, Mr. Paul B. Joyce. The qualified objectors were represented as follows: Let's Transport Inc. by Mrs. P. Gurney; Douglas James Hastings d/b/a Speed-Buggy Enterprises by Mr. D. Hastings; I.A.T. Distributors Ltd. by Mr. M. Stewart; Finning Ltd. by Mrs. K. Smith; and Mr. Everell J. West by himself. Mountain Pacific Transport Ltd. which qualified as an objector did not attend and was not represented at the hearing.

The applicant, which holds no licence authority in this Province, has applied for twelve new Class III Public Freight Vehicle Licenses to operate under the following authority:

Commodities to be carried:	*For Whom to Be Carried:*	*Area, Route or Territory:*
General commodities excluding Class A & B explosives and household goods (Charter trips).	Any one individual or company at any one time.	From B.C./U.S. Border or B.C./Alta. Border transported to all points in B.C. & vice versa, including corridor service; from B.C./U.S. Border & B.C./Alta. Border to B.C./Yukon Border & vice versa.
General commodities excluding A & B explosives & household goods (Charter trips).	Atlantic Pacific Intermodal Shippers Association.	As above.

As the application is extra-provincial in nature, the public hearing was conducted under the reverse onus procedure being utilized pursuant to the *Motor Vehicle Transport Act, 1987*.

Each of the qualified objectors called one witness who testified on their behalf with respect to their own particular situation.

Mr. E. West testified regarding the difficulty he had in collecting salary which he felt was due him for eight months service with N.I.P. Freight Systems (a related company) as a dispatcher, freight solicitor, etc. The salary according to Mr. Melgaard, general manager, was to be either $25,000 per annum, or $1,950 per month depending on the date of the two letters signed by him which were entered as exhibits.

Mr. Stewart, a lease operator, explained his dissatisfaction with the way he was treated by the same firm and the same management. He complained regarding certain accounting practices, delays in payment for work done, and failure on the part of the employer to settle fines or charges, which arose from the use of either faulty licence authority, or faulty company equipment (trailers).

Mr. Hastings, also a lease operator, related his experience when he had been engaged to haul one load for this same firm in May of 1988, which was supposed to have been paid for in fifteen days, but in fact was not settled until he commenced legal action three months later in August of 1988.

Ms. Smith, an employee of the credit department of Finning Ltd., testified that her firm had done some work on a tractor for Mr. Melgaard, who paid by cheque, but stopped payment on that cheque. There was no record of any complaint regarding the work done and although the company had made many attempts to secure payment, the debt to this date has still not been settled.

Mrs. Gurney, in her testimony, indicated that some fifteen thousand dollars had been owed to several of the companies operated by her and her husband. They had been forced in the course of time, through litigation, to settle for only eight thousand dollars.

Each of the said witnesses objected to the granting of the application generally on the basis that the applicant was not a fit company primarily because of their failure to do business in an ethical manner, to settle their debts properly as agreed, or failure to treat employees and lease operators fairly.

Mr. Neil Melgaard, general manager of the applicant company, took the stand and through his testimony responded to the allegations and statements made orally by the objectors and referred to in documents and other material filed at the hearing as exhibits.

Mr. Melgaard also testified as to the style of operation carried out by the applicant company and a related trucking company under common ownership. He talked of his extended experience in the trucking business managing large companies (including his own), which during the recession in the early 80's ran into financial difficulties. He started over again as a lease operator and worked that way until his involvement as a manager with the applicant company.

Mr. Joyce, in his final summary, generally blamed the opposition on vindictive, or disgruntled ex-employees, lease operators and other creditors, and disputed their claims about unfair treatment by the applicant and/or Mr. Melgaard. Mr. Joyce asked the Commission to assign the proper weight to the testimony of the objectors and to carefully consider the facts, which he felt would justify the granting of the application.

On the other hand, the objectors, in final summary, asked that the application be refused, noting that should it be granted there would be more unsatisfied creditors, employees, and lease operators, who would have difficulty collecting debts from the applicant firm.

Much contradictory evidence was presented at the hearing. The objectors alleged certain improprieties on the part of the applicant and/or Mr. Melgaard, and he in turn, speaking on behalf of the company, responded to the allegations offering what could be accepted as reasonable explanations.

Yet some significance must be read into the fact that five objectors, none of them competitors, took the time necessary to attend this hearing and raise questions regarding the applicant and its management.

Confirmation by the Insurance Corporation of British Columbia that the applicant company has a past due account there in the amount of $4,432.70 raises further questions.

This latter information in fact appears to confirm a growing pattern of behaviour by the applicant which suggests a disregard for its responsibilities to other firms and/or individuals.

In this particular case, questions have been raised not only as to the fitness of the applicant, but also to the quality and permanence of the service to be offered, as well as the willingness and ability of the applicant to provide a proper service.

In the circumstances, the Commission has concluded that it would likely be detrimental to the public interest to grant the application under consideration.

Accordingly, the Motor Carrier Commission orders that the application of Tanya Truck Lines Inc., published as No. X1332/88, be and it is hereby refused.

It is further ordered that the applicant and the objectors appearing at the hearing be and they are each assessed costs in the amount of the security deposits filed by them beforehand.

It is further ordered that the security deposit filed by Mountain Pacific Transport Ltd., who did not appear and was not represented at the hearing, be and it is hereby forfeit and is not to be returned.

Approved by:

G. M. MORRIS
Chairman

IAN W. CRAIG
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

1-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of a Review by the Motor Carrier Commission of its decision concerning the application of Jaeger Transport Inc., published as No. 1437/88.

Before: G. M. MORRIS, *Chairman* and W. H. PRESTON, *Commissioner.*

Dated the 25th day of January 1989.

ORDER

The application of Jaeger Transport Inc., published as No. 1437/88, which had been partially granted on August 30, 1988, came before the Motor Carrier Commission on January 19, 1989 for review.

Mr. Jaeger, president of the applicant company, represented his firm. No objectors appeared and none were represented at the review hearing.

Mr. Jaeger, in his presentation, indicated that he had been asked on a number of occasions to provide transportation service, which he had to refuse because he did not have the required licence authority. He noted that that was the reason for the application which he felt was strongly supported, and it was a great disappointment to him when it was only partially granted.

In closing his presentation Mr. Jaeger stressed the need for the licence authority applied for in its entirety, and in particular requested that he be granted the right to transport partial loads even though they be restricted to three or five thousand pounds and that he be permitted to provide a point to point service on Vancouver Island. He felt the granting of that authority would permit him to be more cost competitive and enable him to use his equipment to the fullest.

The Motor Carrier Commission, after carefully considering the testimony of Mr. Jaeger, has concluded that the Commission's original decision of August 30, 1988 ought to be revised.

Accordingly, the Motor Carrier Commission orders that its previous decision in this matter partially granting the said application be and it is hereby wholly rescinded.

It is further ordered that the application of Jaeger Transport Inc., published as No. 1437/88, be and it is hereby granted in the following manner:

(a) The application for transfer of one limited freight certificate from Fred Jaeger d/b/a Fourway Transport to the newly incorporated name of Jaeger Transport Inc. is granted;

(b) The application for deletion of existing clauses two and three permitting the transportation of freight for Mr. A. Mayr d/b/a Blenkinsop Nurseries and Capital Builders Ltd. is granted and they are hereby deleted from the applicant's Conditions of Licence;

(c) The alteration for reclassification of the existing licence authority from limited freight to Class III public freight be and it is hereby granted;

(d) The said applicant be and it is hereby granted the following additional clause:

Commodities to be carried:	*For Whom to Be Carried:*	*Area, Route or Territory:*
Building materials; plumbing materials; lumber; plywood; shingles and shakes; hardware; ferrous & non-ferrous metals; fabricated metals, supplies and materials, including welding rod.	For any individual or company.	From points within the City of Victoria, B.C. and points within a radius of twenty-five (25) road miles (40 km) of the City boundaries of Victoria, B.C. delivered to any point on Vancouver Island and Licence Districts Nos. 14, 14A and 15; or vice versa.

Restrictions:

1. The freight of no more than five shippers may be transported in any one vehicle at any one time.
2. The minimum freight that can be transported for any one individual shipper is 3,000 lbs.

Approved by:

G. M. MORRIS
Chairman

W. H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

4-89

In the Matter of the *Motor Carrier Act*, R.S.B.C. 1979, Chapter 286, and Amendments Thereto and Regulations Thereunder; and in the Matter of Application No. 1983/88 of Norman Garry Pulver.

Before: G. M. MORRIS, *Chairman* and W. H. PRESTON, *Commissioner.*

Dated the 10th day of February 1989.

ORDER

The application of Norman Garry Pulver (the applicant), published as No. 1983/88, came before the Motor Carrier Commission in Kelowna, B.C. on February 8, 1989 for hearing.

The applicant represented himself at the hearing; the sole objector present, Fred Dickinson, also appeared on his own behalf.

The applicant, through this application, was seeking authority for two vehicles to transport general freight of the size and weight that requires loading or unloading by a crane firmly attached to the vehicle (otherwise known as a hiab service) from Kelowna, B.C. delivered to points within one hundred km thereof, or vice versa on a charter trip basis.

The objector provides a similar service from Vernon, B.C., but is limited to the use of a vehicle having a gross vehicle weight not exceeding 5 500 kg.

Mr. Pulver had submitted twelve letters of support, all from businesses located in the Kelowna area, which were filed as Exhibit No. 2 at the hearing. In addition, he read into the record an opening statement and called five shipper witnesses, to each of whom he posed four or five similar questions generally designed to determine the volumes of freight that would be tendered to him if the application were granted, as well as the frequency of service required. He also attempted to ascertain from the shipper witnesses if there was any advantage to them in having a vehicle stationed in Kelowna, and also if they preferred a nineteen and one half foot deck truck rather than Mr. Dickinson's sixteen foot deck.

In the main the responses from the witnesses other than Mr. Forbes were at times conflicting, to some extent tentative, and failed largely to indicate that there was inadequate service available, that there existed an unsatisfied demand for service, or that there was any great advantage in having a vehicle stationed in Kelowna, albeit with a larger deck.

Mr. Forbes, who is in the wholesale plumbing business indicated in his testimony that if the application were granted he would immediately get rid of his own truck and use the services of the applicant. He testified as well that he required immediate service preferably from a truck based in Kelowna. In cross-examination however, while he was sure he required immediate service, he was uncertain as to how many times in the last six months he had required service, or if the objector had provided him any services during that period of time, or was unable to provide him service.

Mr. Dickinson filed an extensive letter of objection, and cross-examined four of the applicant's witnesses. While he did not call any witnesses himself, he gave a lengthy and wide-ranging final summary at the conclusion of the hearing, in which he noted that he had purchased the business he operates only last year.

He expressed his disappointment with the fact that the available market was much less than he had anticipated when he bought the business. He also noted the impossibility of one or two truck operators always being able to provide immediate service. Furthermore, he noted that the demand for hiab services is dropping as there are usually forklift trucks or cranes available at most locations or job sites to unload freight.

Mr. Dickinson noted as well that he would make his books available to the Commission for examination on request, and indicated that the hiab market is small and very competitive. There is no big pool of money out there waiting for potential truckers to tap. There is a surplus of trucks and service available and there is certainly not enough business to support him and the applicant.

Mr. Pulver did not offer final summary at the conclusion of the hearing.

The Commission, after carefully considering all of the information before it, including that presented at the hearing is not convinced that there is sufficient firm demand for additional hiab service in the Okanagan to justify the granting of the application under consideration at this time.

Accordingly, it is ordered that the application of Norman Garry Pulver, published as No. 1983/88, be and it is hereby refused.

It is further ordered that the applicant and the objector each be assessed costs in the amount of security deposits filed by them beforehand.

Approved by:

G. M. MORRIS
Chairman

W. H. PRESTON
Commissioner

By the Motor Carrier Commission:

JOHN KOSOWICK
Secretary to the Commission

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